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Recommended Citation

George P. Smith II, When You Wish Upon a Star: The J.D. Fantasy, 21 J. LEGAL EDUC. 177 (1968).

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WHEN YOU WISH UPON A STAR— THE J. D. FANTASY

GEORGE P. SMITH, II

. . . Not Worthy of Response? A Reply to Professor Power

"When you wish upon a star
Makes no difference who you are
Anything your heart desires will come to you."

"If your heart is in your dream
No request is too extreme
When you wish upon a star as dreamers do."

These sage words of Walt Disney's Jiminy Cricket to the frustrated Pinocchio are of particular significance to use as educators in light of the current J. D. Movement. The charge has been made that our graduates are not being placed on an equal plane of status with graduates of medical and dental schools who receive professional doctorates.¹ It is suggested—indeed, urged—that the simplest and most direct way to resolve this lack of affluence is by merely changing the first degree in law, the LL.B., to a uniform Juris Doctor.²

But, query, assuming *arguendo* the charge is of some merit, and the image of the general profession, as well as the law schools, needs to be strengthened, is this the way to remedy the situation? Can a significant change be effected by a mere rewording of the degree? Could a daily recitation in breviary-like form of the sentence, "The J.D. is great and good—it makes its holder a man of recognized standing in the social community," do the trick? Or, will wishing upon a star realize the heart's desire of our graduates—namely, increased status?

It is maintained here that the development and improvement of the standards for the work undertaken for the basic law degree should be of first and primary consideration. Specifically, by making the law schools substantially stronger and more stable, by acquiring good, productive full-time faculties, by placing greater emphasis upon the realization of lawyer skills through legal education and the development of more effective teaching techniques, by maintaining up-to-date curricula, by phasing out part-time evening law school programs and completely dis-accrediting the study of law through correspondence schools, by maintaining better research libraries, by setting higher admission standards for some of the less prominent schools and complete certification of law schools by the Association of American Law Schools, rather than the American Bar Association alone—the law schools would un-

¹ Hervey, "Law School Graduates Should Receive Professional Doctorates" . . . Time For a Change from LL.B. to J.D. Degree," 10 Student Lawyer Journal 5 (June, 1965).

The author recognizes Deah Hervey's academic credentials, but fails to understand their correlative significance to the "Movement." Cf. Power, "In Defense of the J.D.," 20 J. Legal Ed. 67, n. 1 (1967). See generally, Wright, "Let's Keep the LL.B.," 3 Trial 19 (No. 5, August/September, 1967).

² Hervey, *supra*; Power, *supra*, at 68.

doubtedly gain in strength and maturity and would consequently ensure for their graduates a professional recognition of the highest order.³

A baccalaureate degree is not uniformly regarded as a prerequisite for study by many law schools. In no other profession may one gain admission by correspondence study. No medical school, no dental school, no graduate school awarding the Ph.D., allows its students to pursue graduate study by correspondence. Yet, in our profession, such is not the case. Once admitted to practice in one state on the basis of a correspondence law degree, one may then proceed to sit for other state bar examinations. So long as there remain two states which allow one to sit for a bar examination upon completion of correspondence work in law, the multiplication of professional error by a weakening of the entire profession, itself, is encouraged and in fact condoned. It is well to remember, further, that in no other profession may one be admitted *solely* on the basis of actual "office experience" which is taken to substitute for all or a significant part—depending on the state—of a formal study program.

Little quarrel is to be found with the proposition that some form of discrimination exists between law graduates and graduates from medical school, dental school and Ph.D. holders. But, perhaps—because of the existing education policy weaknesses—this *minor* discrimination is justified. Legal education will not "come of age" by accomplishing a change of degree. A change in the name of the degree does not change to any degree a graduate's mind.⁴ Indeed, the *basic* aims of legal education or the *purposes* of the profession, itself, are in no way served by this effort at this particular time. Substantive and creative curriculum and educational policy changes are the first steps which must be taken before effecting a degree change. Once this has been accomplished, then, and only then, if faculty, students and alumni desire the Juris Doctor, should it be considered as the first degree.

The very real tragedy which may be witnessed as a consequence of the current J.D. Movement is to be found in the realization that certain small law schools—with a wide proliferation of marginal evening schools heading the group—have decided to by-pass a period of normal school development and attempt to attain for their graduates a form of professional recognition which could not, and should not, properly be theirs for many years.⁵

The so-called "reasons" advocated by Professor Garrett Power for a uniform change from the LL.B. degree to the J.D. are whimsical and utterly devoid of logic.⁶ He states that because sow-gelders and farriers were, as

³ See generally, Smith, "Instant Status—The J.D. Degree," 3 Trial 18 (No. 5, August/September, 1967). See also, 13 Student Lawyer Journal 20 (No. 5, January, 1968) where Mr. O. Wayne Corley, President of the Law Student Division of the American Bar Association, briefly comments on the reasons he feels law schools are not meeting their education responsibilities to their students and stresses the need for law studies to be brought "in line with the actual practice of law." And see, "Forum on the Future of Legal Education," The Cornell Law Forum 7 (Winter 1967-68).

⁴ Barnhart, "Doctoring the Legal Profession (and other things)," 21 Ark.L.Rev. 363, 369 (1967).

⁵ Smith, "Much Ado About Nothing—The J.D. Movement," 11 Student Lawyer Journal 8 (No. 7, June 1966); Wright, *supra*, n. 1.

⁶ Power, "In Defense of the J.D.," 20 J.Legal Ed. 67 (1967).

early as 1723 called Doctors, and because, further, individuals dealing in astral-healing, electro-homeopathy, Zoroastrianism, veterinary medicine, etc., are rightfully addressed as Doctors, those individuals graduating from law schools have an equally prominent position of trust and respect in the community and educational background and should, therefore, be addressed accordingly by use of the title, Doctor.⁷

Professor Power apparently has failed to realize that a lawyer's attainments lie within the realm of the cerebral and philosophical rather than in the physical and the sensual.⁸ It is respectfully submitted that lawyers do not in fact accomplish their purpose of increased affluence when they seek to emulate the doctoral degree holders of those whose central activities deal primarily with salves (e. g. physicians, dentists, veterinarians, opticians, podiatrists, etc.) than with mere abstract ideas.⁹

As to the holder of the Ph.D., it should be remembered that such an individual has had anywhere from two to four years of advanced study, in addition to the baccalaureate degree, from two to five years of research for his dissertation—which must be defended orally—and must have a working knowledge in two languages in addition to English. What law student faces such rigors during his three-year course of study?

The most logical solution to the "problem" facing holders of the LL.B.—who for some reason or other feel their degree is a disadvantageous historical fluke—would be to grant the B.C.L. (Bachelor of Common Law) in its place. But, although this would be historically proper, it would still be only a *bachelor's* degree, and not have the status or carry with it the privilege of using the title Doctor!

Some schools, primarily in the Mid-West—have, in the past, awarded the J.D. as an honors degree to graduating students in a top percentile—usually tenth or fifteenth—of the class. But, alas, such procedures have now been looked upon with disfavor because, obviously, to do so would be to invidiously discriminate against a wide class of degree holders who would be incapable of earning the coveted J.D.

It is a hard fact of practical life, but sooner or later performance must measure up to promise or prestige is gone.¹⁰ Employers will evaluate a prospective employee—not by the name of his degree, but by his personality and potential and from an evaluation of his grade index together with a consideration of the caliber of the law school from which he graduated. The *less sophisticated* client merely judges his attorney by the nature of the *results* which he brings to a legal problem.

Professor Power also states that because of the failure to award the J.D. uniformly, many grave injustices have befallen holders of the LL.B. For example, he notes the extreme embarrassment and psychological sufferings caused to LL.B. recipients who march in academic parades and that academic protocol exerts a type of negative-unstated influence on such individuals.¹¹ I doubt that any graduate from Harvard, Yale, Columbia or Cornell, to name

⁷ *Id.*, pp. 68, 70.

⁸ *Op. cit.*, *supra*, n. 4 at 369.

⁹ *Ibid.*

¹⁰ *Id.*, at p. 371.

¹¹ *Op. cit.*, *supra*, n. 6 at 69, 70.

but a few, is embarrassed because of this situation. To prevent such a stressful situation from developing, however, both Columbia and Harvard allow their LL.B. degree holders to wear a doctoral robe at graduation ceremonies and on other academic occasions. Professor Power is unable to produce any documentation in support of this obviously weak consideration. Not one letter from one who has so suffered is mentioned.

The "major"—and I use this word advisedly—example of discrimination cited as a result of the awarding of the LL.B. is to be found in government service and in undergraduate teaching argues Professor Power.¹² Specifically, it is maintained that the salary range for those in government service is more restricted than for those with a J.D. degree. The governmental agencies who follow this policy are not enumerated. The United States Civil Service Commission has stated unequivocally that no such salary discrimination exists.¹³

When cases arise where an applicant for a teaching position at the undergraduate level has only an LL.B. and some reluctance is evidence by a particular dean to give the appellant rank as assistant professor because of the bachelor's degree, a simple explanation of the degree's significance generally suffices. On occasion, cases have been reported where a law school dean, himself, has been requested to explain the significance of the LL.B. It is submitted that most sophisticated administrators at recognized colleges and universities are capable of both appreciating and understanding the historical background for awarding the LL.B. degree. No widespread discrimination can be found—only isolated examples which, in themselves, do not warrant the uniform adoption of the J.D. as the first degree in law.¹⁴ The rather interesting fact that a holder of an LL.B. degree was elected President of Yale is rather conclusive proof that one can succeed in educational circles without a doctorate.

Although Professor Power refused to discuss the merits of my argument for retaining the LL.B., by his very refusal, and, specifically, by his own weak line of presentation, he has presented evidence which established beyond a reasonable doubt that the J.D. Movement is devoted solely to the purpose of acquiring "instant status" for all.

Neither Touche Turtle, nor Superman alias Clark Kent, alias John Hervey, can right the supposed injustice which has befallen the legal profession by

¹² *Id.*, at 69.

¹³ *Op. cit. supra*, Smith, n. 5 at 8.

¹⁴ Dean William C. Warren of the Columbia University Law School stated: "I like the LL.B. It's been around for a hundred years and I don't see any reason to change. If there's a problem it's one of others' lack of understanding of the degree, and I don't think we should change our way of doing things just because they get confused. When a fellow graduates from here, he doesn't have just an LL.B., he's got a Columbia LL.B. That's the important thing and calling it a J.D. or an X.Y.Z. wouldn't change things one bit. There's no problem of substance here, just one of form. And as lawyers we know that substance should be controlling." 20 Columbia Law School News 1 (No. 6, December 15, 1965).

The Columbia Law Alumni Association recently went on record in favor of Columbia's retention of the LL.B. 22 Columbia Law School News 1, 7 (No. 6, February 19, 1968).

In a recent study of the controversy, no documented cases of discrimination were produced by the champions of the J.D. at Columbia. *Ibid.*

-defending and urging the uniform adoption of the J.D. degree. Perhaps it remains for the creative genius of Walt Disney and Mighty Mouse to effect this evolution in status so desperately needed by some law graduates and their law school alma maters.

Stay tuned, for the next exciting episode in fantasy land. And, remember, keep counting those stars in the heavens and wishing. If it could happen to Pinocchio, it could happen to you!